

**FLATHEAD COUNTY BOARD OF ADJUSTMENT  
MINUTES OF THE MEETING  
JUNE 7, 2022**

**CALL TO ORDER  
6:00 PM**

A meeting of the Flathead County Board of Adjustment was called to order at approximately 6:00 p.m. at the Flathead County Fair & Event Center, Grandstand Building, 265 N Meridian Road, Kalispell, Montana. Board members present were Jim Dyon, Tom Davis, Tobias Liechti, Cal Dyck, and Roger Noble. Erik Mack, Landon Stevens, Erin Appert, and Zachary Moon represented the Flathead County Planning & Zoning Office.

There were 6 members of the public in attendance at the meeting and no members of public in attendance over Zoom.

**APPROVAL OF  
MINUTES  
6:01 PM**

It was mentioned that the minutes from the previous meeting will be addressed at the August 2022 meeting.

**PUBLIC COMMENT  
(Public matters that are  
within the jurisdiction of the  
Board 2-3-103 M.C.A)  
6:01 PM**

None

**BOARD DISCLOSURE  
OF ANY CONFLICT OF  
INTERESTS  
6:01 PM**

None

**C HOLDINGS, LLC  
(FZV-22-03)  
6:01 PM**

A request from C Holdings, LLC for an after-the fact zoning variance to Section 3.24.040(4)(A) of the Flathead County Zoning Regulations (FCZR), to the front yard setback for a structure. The subject property is zoned BS (Business Service) and is located at 3905 Highway 40 near Columbia Falls, MT within the Rural Whitefish and Scenic Corridor Zoning Districts.

**STAFF REPORT  
6:02 PM**

Erin Appert reviewed the Staff Report FZV-22-03 for the board.

**BOARD QUESTIONS**  
**6:03 PM**

None

**APPLICANT  
PRESENTATION**  
**6:04 PM**

The applicants and the owners of the property [who did not identify themselves], 225 Twin Bridges Rd., said she was not sure what had happened but explained the process that they had been through [it was mostly inaudible]. She passed out documents and discussed it with the board, at great length and at their table. *[It was inaudible.]*

The Planning Director interjected to inform the board that they could not hear the discussion and they had to have it audible for the record. Dyck explained that they were reviewing two different site plans, but on one had the structure turned 90 degrees. They were trying to walk through what that would look like. *[Inaudible table discussion continued with the applicant].*

Dyck asked about the location of the access, which staff replied was from Dillon Road but would change if the conditional use permit (CUP) was approved and would then be from Hwy 40.

**BOARD QUESTIONS**  
**6:14 PM**

Dyck said that it was difficult because they had criteria to meet but there were extenuated circumstances.

**PUBLIC COMMENT**  
**6:14 PM**

None

**STAFF REBUTTAL**  
**6:15 PM**

Mack recognized that a lot of the discussion was around the address and access. This property had frontage on 3 sides. They needed to look at the definition of a through lot and corner lot when determining what the front would be. He said the easiest thing would be to consider Hwy 40 and Lilly Lane a front, which would be a through lot, by definition. There needed to be a front yard setback of 30'.

**BOARD DISCUSSION**  
**6:17 PM**

Noble acknowledged that there had been approval from the City of Whitefish. He asked that staff explain in more detail.

Appert explained that the applicants had a zone change was in 2009. The site review, where they amended the site plan, was in 2014. The county took over jurisdiction from the City of Whitefish in 2015. Mack interjected that they had a site plan review but there was no follow up with county when it was taken over and the county was unaware of the file.

Davis asked what the next step [for the applicants] would be in case this was denied. Mack said they had 30 days to come into compliance or develop a plan. He understood construction workers are busy. They were willing to work with them to come up with a reasonable timeline.

Davis about after the fact fees and Appert explained they had already paid the after-the-fact fees.

Liechti asked whether it was an existing, non-conforming use. He also asked if setbacks were from the property line and if Lilly Lane was a private road.

Noble asked for clarification on if it had been originally approved by City of Whitefish when they had jurisdiction. Mack explained the applicants had not started building until after the county took over the jurisdiction. The applicant interjected that she disagreed and had started building in 2014. Mack responded saying that the county would have been out there inspecting it.

Davis asked if there had been a building permit provided by the City of Whitefish. The applicant explained the process that they had been through with the City of Whitefish.

Noble asked if she had provided them a copy of the architectural review and the [original] zone change that she had been through with the City of Whitefish. She only had the review.

Dyck reviewed it and saw the setback was from Lilly Ln.

Davis asked if they had worked directly with the City of Whitefish or if they had worked through a third party, or a firm. Her answer was *partially inaudible*, but said she had a third party represent them throughout the process. She did not know where the disconnect was in why they had gone from a 30' setback to where it was now.

Noble said it was because the building had been rotated 90 degrees. He asked what had facilitated that. The applicant did not remember the phone conversation but had an email that stated there was an updated site plan, which happened after the architectural review. She did not know if it was a result of the review; nobody remembered how it got changed.

Dyon asked if the house was square. She replied that it was more of a rectangle.

Mack interjected that the county took over jurisdiction in July of 2014. Her letter of approval, from the architectural review, was dated in April 2014 and was lost in the transition of jurisdiction. They continued to discuss the details of

how it all came together. The board discussed this at great length *but it was inaudible*.

Dyck clarified with the applicant that the structure was 15' over the line and asked what removing 13' would entail. The applicant replied that they would be removing their shared office space. She said they were already short on space, and it would be a big burden to remove it. They discussed the logistics of the structural design at great length.

He also discussed the unfortunate transition of jurisdiction between the City of Whitefish and Flathead County. This was a situation where it should have been caught, especially by the technical representatives that were hired to work on the project.

Noble pointed out that the City of Whitefish had approved a different site plan than what had been developed. They had approved a 30' setback and that was not recognized at time of development. He felt that was a disconnect.

Dyck asked about the definition of a through lot, and if the City of Whitefish had the same definition. Mack said he was unsure but knew that they recognized the setback of 30'. Dyck was trying to figure out if they had the same definition as the county or if there was a discretion between the criteria of the rear setbacks. He did not know why an architect or firm would make those mistakes. He felt that was part of the dilemma.

Noble wished to table the item because there is uncertainty as to the what the definitions of a through lot and setback requirements from the City of Whitefish at that time. He felt the applicant should find out what happened. Noble pointed out that right now, the application had 8 negative findings, and felt the applicants needed to do some homework. The applicant asked for clarification if they were specifically wanting to know why the home was rotated. Noble said they needed to have actual information as to why it was rotated.

Dyck agreed with Noble, that right now with the information in front of them, it would be very difficult to rewrite the negative findings and they did not have enough information to do that. They had certain criteria to follow. They needed to know why it was rotated and they should have that on file. He asked that she investigate that.

The applicant said they had talked with a representative, who had given her the file from the city to review and she could not find any information as to why the newer setback was submitted to the city again and what had happened.

The continued to discuss what kind of information they wanted to gather before deciding.

**MOTION TO TABLE  
UNTIL NEXT MEETING  
(FZV-22-03)  
6:42 PM**

Noble made a motion, seconded by Liechti, to table FZV-22-03 until the August 2, 2022 meeting.

**ROLL CALL TO TABLE  
UNTIL NEXT MEETING  
(FZV-22-03)  
6:42 PM**

Motion passed unanimously on a roll call vote.

**ANDY'S CRAFTHOUSE  
LLC  
(FCU-22-09)  
6:43 PM**

A request from Andy's Crafthouse LLC for a Conditional Use Permit to operate a tavern on property located at 8030 Highway 35, Bigfork, MT. The property is located within the Bigfork Zoning District and is zoned B-2 (General Business). The total acreage involved in the request is approximately 1.84 acres

**STAFF REPORT  
6:43 PM**

Zachary Moon reviewed the Staff Report FCU-22-09 for the board.

**BOARD QUESTIONS  
6:44 PM**

None

**APPLICANT  
PRESENTATION  
6:44 PM**

Brian Anderson, 14403 Bear Meadow Lane, was the applicant and explained that an opportunity came up to purchase this property. They needed the extra space and parking. He discussed his proposal and intent in detail.

**BOARD QUESTIONS  
6:46 PM**

Noble asked what the operating hours were. Anderson clarified it was 11am -10 pm. Noble read something from the staff report (*it was inaudible*). The applicant was curious about that specific condition as well and explained that they had limitations [from the state] on when alcohol could be served. He wondered if the condition had been added by planning staff or the Bigfork Land Use Advisory Committee (BLUAC). Anderson said they had a standard that was approved by the state that they had to comply with and had not seen this condition before. Moon said it was something that they had added based on the [submitted] hours of operations and then added an extra hour to it. Noble asked the applicant a question (*but was inaudible*). The applicant explained that the only reason why he was questioning it was because sometimes music artists looked for places to do special events, after hours, and would probably conflict with that. He did not understand why he would be more restricted than all the other neighbors around them.

Liechti explained that they were bound to the information submitted in the application when approving a Conditional Use Permit (CUP). Mack interjected that the application could be modified but would be determined right here [at the meeting]. The applicant said that when it was submitted they were trying to figure out if they even needed a CUP because Micro-distilleries were an allowable use. It was before they had a restaurant. He wanted to amend it. The liquor laws [in the state] allowed them to stay open until 2:00 am.

Liechti asked him to clarify why the menu had been submitted, reiterating to the applicant that whatever had been submitted could not be changed.

They discussed the amendments the applicant wanted to make. He wanted to change the operation of hours to reflect what he would be allowed by state law. Noble asked if he had the liquor license and he said that they were waiting on approval.

**PUBLIC COMMENT**  
**6:54 PM**

None

**STAFF REBUTTAL**  
**6:55 PM**

Mack said they could change the conditions of the application.

**BOARD DISCUSSION**  
**6:00 PM**

Dyon shared something [*but was inaudible*].

Davis was, overall, ok with it. He questioned if he was planning on doing music in the outdoor dining area. Anderson responded [*but was inaudible*]. He explained that the only residential home was behind them and was heavily forested on the top of the hill. They were further away from the residential structure compared to other surrounding places with a liquor license. Davis was ok with amending the hours of operation but was open to a type of noise ordinance after certain operating hours.

Noble said that he recalled they had done it before and felt they should be consistent. Davis felt they should consider future use if ownership should change. Dyck was also concerned because it was still near residential.

They discussed the language to be used in the additional Condition #15 to state:

*No amplified music after 10pm Sunday through Thursday and after 11pm Friday through Saturday.*

They also discussed the amendments to condition #9 to state:  
No event activities are permitted after 2am.

**MAIN MOTION TO  
ADOPT F.O.F.  
(FCU-22-09)  
7:03 PM**

Liechti made a motion, seconded by Davis, to accept Staff Report FCU-22-09 as Findings-of-Fact.

**ROLL CALL TO ADOPT  
F.O.F.  
(FCU-22-09)  
7:03 PM**

Motion passed unanimously on a roll call vote.

**MOTION TO APPROVE  
AS AMENDED  
(FCU-22-09)  
7:04 PM**

Liechti made a motion, seconded by Dyon, to approve FCU-22-09, as amended.

**ROLL CALL TO  
APPROVE  
(FCU-22-09)  
7:04 PM**

Motion passed unanimously on a roll call vote.

**JOSEPH & KATHERIN  
JIMENEZ  
(FZV-22-02)  
7:05 PM**

A request from Joseph & Katherine Jimenez for a variance to Sections 3.14.040(3) and 3.14.040(5) of the Flathead County Zoning Regulations (FCZR), to the setback requirements and lot coverage. The subject property is zone R-5 (Two-Family Residential) and is located at 22 Terry Road, Kalispell, MT within the Evergreen Zoning District.

**STAFF REPORT  
7:05 PM**

Landon Stevens reviewed the Staff Report FZV-22-02 for the board.

**BOARD QUESTIONS  
7:07 PM**

None

<b>APPLICANT PRESENTATION 7:07 PM</b>	Joseph Jimenez, 22 Terry Rd, was the applicant and explained the history of the property. The selling agent did not disclose that there was a setback issue. He explained the intent of the property and the history of how they found themselves in the situation.
<b>BOARD QUESTIONS 7:08 PM</b>	None
<b>PUBLIC COMMENT 7:09 PM</b>	None
<b>STAFF REBUTTAL 7:09 PM</b>	None
<b>BOARD DISCUSSION 7:09 PM</b>	<p>Davis understood that this was a tough situation. There were other properties in the area that had setback issues as well. He felt that since the duplex had been built for a long time, and within the county, the ship had sort of sailed. He looked at the remedies, which were not good. He was inclined to approve the variance based on the consistency of the four neighboring properties.</p> <p>Liechti concurred with the findings.</p> <p>Noble commended the staff on the report and the findings and in making a recommendation.</p> <p>Jim said it was all good.</p> <p>Dyck said that it was well written, addressing a difficult situation.</p>
<b>MAIN MOTION TO ADOPT F.O.F. (FZV-22-02) 7:12 PM</b>	Liechti made a motion, seconded by Noble, to accept Staff Report FZV-22-02 as Findings-of-Fact.
<b>ROLL CALL TO ADOPT F.O.F. (FZV-22-02) 7:12 PM</b>	Motion passed unanimously on a roll call vote.



**MOTION TO APPROVE  
(FZV-22-02)  
7:12 PM**

Liechti made a motion, seconded by Noble, to approve FZV-22-02.

**ROLL CALL TO  
APPROVE  
(FZV-22-02)  
7:12 PM**

Motion passed unanimously on a roll call vote.

**NEW BUSINESS  
7:13 PM**

Mack reviewed what the county had worked up during a previous workshop regarding short-term rentals. He had also talked to the fire department, who did not like the idea of a condition for fire inspection. They suggested a requirement for a brochure available for renters to inform them of fire danger. The county also proposed a limitation to one short-term rental property on a residential property. They would like to see a guest house or single-family dwelling because an ADU was meant for affordable housing. Mack asked that they take home the proposal and digest it.


Davis asked if the cell tower was on the horizon. Stevens said he had reached out the applicant but has not heard back.

**OLD BUSINESS  
7:16 PM**

None

**ADJOURNMENT  
7:16 PM**

The meeting was adjourned at approximately 7:16 pm on a motion by Dyck, seconded by Noble. The next meeting will be held at 6:00 pm on August 2, 2022.

  
\_\_\_\_\_  
Cal Dyck, Chairman

  
*for* \_\_\_\_\_  
Angela Phillips, Recording Secretary

APPROVED AS SUBMITTED/CORRECTED 08/02/2022